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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/824,341

04/14/2004

Gary W. Guenst

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MEDTRONIC, INC.  
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EXAMINER

TYSON, MELANIE RUANO

ART UNIT

PAPER NUMBER

3773

MAIL DATE

DELIVERY MODE

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<p align="center"><b>Advisory Action</b> <b>Before the Filing of an Appeal Brief</b></p>	<b>Application No.</b> 10/824,341	<b>Applicant(s)</b> GUENST, GARY W.	
	<b>Examiner</b> Melanie Tyson	<b>Art Unit</b> 3773	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 09 May 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
 b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

#### AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
 (b) ☐ They raise the issue of new matter (see NOTE below);  
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
 5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
 6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
 7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
 The status of the claim(s) is (or will be) as follows:  
 Claim(s) allowed: \_\_\_\_\_.  
 Claim(s) objected to: \_\_\_\_\_.  
 Claim(s) rejected: \_\_\_\_\_.  
 Claim(s) withdrawn from consideration: \_\_\_\_\_.

#### AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

#### REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
 12. ☒ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
 13. ☐ Other: \_\_\_\_\_.

/(Jackie) Tan-Uyen T. Ho/  
Supervisory Patent Examiner, Art Unit 3773

/Melanie Tyson/  
Examiner, Art Unit 3773

Continuation of 11. does NOT place the application in condition for allowance because: the applicant's arguments are not persuasive. Regarding the applicant's argument that the catheter is inserted in fastener 50 and not conduit 12, the examiner has considered the conduit including both portions 26 and 12 (see previous office action). Therefore, Duhaylongsod discloses the step as claimed. Regarding the applicant's argument that the catheter is not advanced into the blood vessel through an incision (at anastomosis site), Figure 7 clearly shows a catheter (80) advanced into the blood vessel through an incision at an anastomosis site. It is further noted that the limitation "at anastomosis site" is not recited in claims 1 and 32. Regarding applicant's argument that the distal end of the conduit is not fixedly joined to the blood vessel, Figure 8 clearly shows the distal end (16) is fixedly joined to the blood vessel in that it is expanded to engage the blood vessel to remain in place. Regarding applicant's argument that the two separate embodiments disclosed are not combinable, the second embodiment is used to show that providing an oxygenated liquid flow through a tubular member disposed in a conduit is well known in the art, thus it would have been obvious to one having ordinary skill in the art to do so in order to maintain oxygen flow through the healthy portion of the blood vessel and minimize the risk of other serious complications during the procedure. Regarding the applicant's argument that Duhaylongsod fails to disclose a graft connection to or near an end of any blood vessel, Duhaylongsod's graft connection position, giving the broadest reasonable interpretation, has been considered to be "near the blood vessel proximal end" of the blood vessel. Regarding the applicant's argument that Duhaylongsod teaches away from using sutures since Duhaylongsod discloses embodiments "without the need for sutures," preferred or exemplary embodiments do not indicate a "teaching away" from other embodiments well known in the art. It would have been obvious to perform the step of suturing in order to enhance attachment, thus minimizing the risk of inadvertent detachment. Regarding the applicant's argument that Armor is not properly combinable with Duhaylongsod since fluid provided through the conduit would not be able to flush the blockage area because it is the area being bypassed, it is well known that creating incisions and inserting conduits and/or other devices into blood vessels causes debris. Therefore, fluid provided does not have to be used solely for the purposes of removing the blockage, but may be used to flush unwanted debris in the vessel surrounding the bypassed area in order to facilitate the procedure.